

INITIATIVE 640

I, Ralph Munro, Secretary of State of the State of Washington and custodian of its seal, hereby certify that, according to the records on file in my office, the attached copies of Initiative Measure No. 638, Initiative Measure No. 639, and Initiative Measure No. 640 are true and correct copies as they were received by this office.

Reviser's note: Multiple initiatives were certified by this certificate. Each is filed as a separate document.

1 AN ACT Relating to the protection of living marine resources
2 including salmon, steelhead, other anadromous trout and char, and
3 sturgeon from wasteful and harmful fishing practices; amending RCW
4 75.12.010; adding a new chapter to Title 75 RCW; and providing an
5 effective date.

6 BE IT ENACTED BY THE PEOPLE OF THE STATE OF WASHINGTON:

7 NEW SECTION. **Sec. 1.** PURPOSE. The purposes of this chapter are
8 to:

9 (1) Declare a state policy that will promote restoration of the
10 state's marine and anadromous fish stocks while promoting economically
11 viable fisheries that do not unnecessarily harm fish, birds, and other
12 animals not intended for harvest;

13 (2) Promote efforts which will minimize Canadian and other foreign
14 interception of Washington salmon and steelhead stocks;

15 (3) Require coordination by the department with federal agencies to
16 minimize potential impacts of fishing on seabirds and other protected
17 animals; and

18 (4) Accord priority to those fisheries that have been shown to have
19 the greatest value to the people of the state of Washington.

1 NEW SECTION. **Sec. 2.** FINDINGS. Important fisheries for salmon
2 and other species in Washington state have been closed or severely
3 restricted because of the depleted condition of important natural
4 stocks, resulting in lost economic, recreational, and cultural
5 opportunities for Washington citizens. Wasteful fishing practices have
6 significantly contributed to the problems. In many areas of Washington
7 where fisheries are permitted, harvestable surpluses of fish are mixed
8 with nontargeted aquatic creatures, such as birds, shellfish, forage
9 species, juvenile and unmarketable fish, and weak natural or other
10 nontargeted salmon and other anadromous fish stocks. The fishing gear
11 employed often catches both targeted and nontargeted animals
12 indiscriminately. This by-catch can be greatly reduced by fishing in
13 areas where there is little mixing of desired catch and potential by-
14 catch. Where by-catch cannot be avoided in order to conduct an
15 otherwise valuable fishery, by-catch can be minimized by allowing only
16 fishing gear which results in low by-catch mortalities.

17 Salmon hatcheries often produce more harvestable surpluses than
18 natural stocks, with the result that nonselective fisheries targeting
19 on hatchery fish overharvest commingled natural salmon stocks.
20 Important natural salmon stocks are also impacted by hatchery
21 management policies that do not address issues of competition between
22 hatchery and natural stocks, spread of disease, and other ecological
23 interactions. Used properly and in conjunction with regulations
24 permitting fishing gear and methods that can harvest selectively,
25 hatcheries can provide great benefits and support natural stock
26 recovery by rearing critical stocks. Washington salmon hatcheries
27 should be managed for the specific goal of contributing to important
28 fisheries in a manner that is consistent with protection and
29 rehabilitation of natural stocks.

30 Excess harvest of threatened natural salmon stocks originating in
31 Washington waters has also resulted from Canadian interception of large
32 numbers of Washington salmon stocks, including endangered Columbia
33 river chinook and other stocks under consideration for listing under
34 the endangered species act. Canada has become the largest exploiter of
35 many salmon stocks originating in Washington waters and the catch
36 disparity between United States and Canadian fishers has been
37 exacerbated by closures in Washington while fishing in Canada has
38 continued unabated, often targeting the Washington stocks sought to be
39 protected by the fishing closures in Washington. Canadian harvest of

1 Washington salmon is subject to the terms of the Pacific salmon treaty
2 intended to control the extent of each country's harvest of the other's
3 salmon. Washington fishers catch large numbers of Canadian salmon,
4 primarily sockeye and pink salmon homing to the Fraser river, while
5 Canadian fishers intercept Washington salmon, primarily chinook and
6 coho salmon, resulting in further depletion of Washington salmon
7 stocks.

8 Despite the vast expenditures by the citizens of the state of
9 Washington to maintain and enhance salmon stocks in their state,
10 fishing regulations and policies have resulted in allocations among
11 nontreaty fishers without regard to the value to the people of the
12 state of Washington. Chinook and coho salmon have been proven to be
13 more valuable in recreational fisheries, while pink, chum, and sockeye
14 salmon have generally proven to be more suitable and valuable in
15 commercial fisheries, except where shown to be more valuable in
16 recreational fisheries.

17 NEW SECTION. **Sec. 3.** DEFINITION. As used in this chapter, "by-
18 catch" means nontargeted fish, shellfish, and protected animals that
19 are captured or destroyed while fishing.

20 NEW SECTION. **Sec. 4.** GUIDELINES. The people authorize and direct
21 the department and the governor of the state of Washington to take the
22 following actions:

23 (1) Provide and apply clear standards consistent with the
24 provisions of this chapter for controlling destruction during fishing
25 operations of fish and other sea life that are not intended for
26 harvest;

27 (2) Permit only fishing gear and methods of harvesting fish and
28 shellfish that are consistent with the policies and by-catch mortality
29 standards specified in this chapter;

30 (3) Manage salmon and steelhead hatcheries and hatchery stocks to
31 contribute to fisheries while protecting or enhancing natural stocks;

32 (4) Minimize Canadian and other foreign interceptions of salmon and
33 steelhead originating in Washington, if necessary by adopting
34 regulations to reduce Washington interception of Canadian fish;

35 (5) Maximize economic benefit to the state and its citizens in
36 allocating harvestable food fish and shellfish;

(6) Consult and coordinate with federal officials to minimize potential impacts of fishing on seabirds and other federally protected species; and

(7) Develop and evaluate fishing methods that comply with the by-catch standards in section 5 of this act that would become legal on January 1, 1997, if currently legal methods cannot comply with such standards.

NEW SECTION. **Sec. 5. BY-CATCH STANDARDS.** (1) The purpose of this subsection is to protect nontargeted salmon, steelhead, other anadromous trout and char, and sturgeon from fisheries on harvestable stocks of salmon and sturgeon. Salmon gear evaluations shall be based upon the average of the two observed mortalities for chinook and coho salmon. Sturgeon gear evaluations shall utilize observed mortalities for sturgeon. The director may require more specific evaluations when deemed appropriate. Evaluations shall involve life stages of fish most commonly exposed to the gear and be conducted under conditions representative of when the gear would be utilized. Fishing gear types shall not be used unless capable of live releasing such fish with no greater than fifteen percent mortality, in numbers of fish, during 1997 and thereafter.

(2) The times and locations legal gear may be operated shall be determined by the director. When and where a gear type is deemed to pose a significant threat to the abundance of by-caught salmon, steelhead, other anadromous trout or char, sturgeon, sea birds, or other protected animals, the area shall be closed to fishing with such gear. When and where it is determined that such by-catch will have a lesser impact, fisheries may be conducted only if the gear is operated in accordance with procedures qualifying it for use under the by-catch standard. When and where it is determined that a fishery does not have significant effect on the abundance of such by-catch, such operating procedures may be waived. Waiving of gear operating procedures shall be based only on results of test fishing and catch monitoring.

(3) Any gear type used for food fish and shellfish other than salmon and sturgeon that results in by-catch mortality of nontargeted or unmarketable fish or shellfish that cumulatively weigh in excess of fifteen percent of the live weight of the catch of targeted stocks during 1997 and thereafter is not permitted.

(4) If the director determines that by-catch standards prevent nontreaty fishers from harvesting their full share of sockeye, pink, or chum salmon, in accordance with rulings under *United States of America et al. v. State of Washington et al.*, Civil No. 9213, United States District Court for Western District of Washington, February 12, 1974, and *Sohappy v. Smith*, 302 F. Supp. 899 (D. Oregon, 1969), as amended, affirmed, and remanded 529 F. 2d 570 (9th Cir., 1976), existing gear types conforming to the by-catch standards shall be given maximum opportunity for harvesting the targeted stocks consistent with other provisions of this section. If additional harvest levels are required to achieve nontreaty shares the director shall not be constrained by previous provisions of this title after January 1, 1997, for authorizing other gear types that satisfy the by-catch standard. Commercial license applications for new gear types, authorized by the director, shall be limited to holders of 1996 commercial salmon fishing licenses. However, the issuance of such licenses shall be limited to a number consistent with the economic welfare of commercial salmon licensees and the citizens of the state.

NEW SECTION. **Sec. 6.** EVALUATING SELECTIVITY OF FISHING METHODS. The department is directed to study and establish by-catch mortality rates for the various types of existing authorized fishing gear. Existing studies shall be utilized when deemed appropriate by the director. If such studies are unavailable, by-catch mortality rates shall be based upon actual or simulated conditions intended to duplicate the operation of representative gear types in typical fishing situations. Mortality rates shall include and are limited to the sum of immediate mortality, mortality following twelve hours in confinement, and losses to predators while fish and shellfish are contained in or held by the gear. Applicability of findings of these studies to various times, places, and other circumstances shall be determined by the director.

The director shall establish and enforce rules consistent with maintaining the by-catch standards in the state's fisheries.

NEW SECTION. **Sec. 7.** ELIMINATION OF NONCONFORMING FISHING GEAR AND METHODS. This chapter shall not be construed to prohibit the use of gear that does not comply with the by-catch standards until January 1, 1997, when noncomplying gear is illegal. Nonconforming salmon and

1 sturgeon fishing gear shall not be licensed by the state for use after
2 this date.

3 NEW SECTION. **Sec. 8.** HATCHERY POLICY. Salmon hatcheries operated
4 by the state of Washington shall be managed and operated to contribute
5 to fisheries in a manner that is consistent with the protection and
6 rehabilitation of natural stocks.

7 NEW SECTION. **Sec. 9.** REDUCTION OF FOREIGN INTERCEPTION OF
8 WASHINGTON FISH STOCKS. The policy of the state of Washington is to
9 reduce Canadian and other foreign interceptions of salmon and steelhead
10 originating in Washington. The governor and other Washington state
11 officials responsible for negotiation of future fisheries agreements
12 with Canada and other nations shall strive to reduce interceptions of
13 such fish originating in Washington. If it is necessary to reduce
14 Washington interception of fish originating in Canada in order to
15 achieve this goal, the director is authorized and directed to adopt
16 appropriate rules to achieve such reduction.

17 NEW SECTION. **Sec. 10.** VALUE OF FISHERIES TO BE CONSIDERED. In
18 enacting or adopting rules affecting fisheries for food fish and
19 shellfish in the state of Washington, the director is authorized and
20 directed to consider economic values, including those of the
21 recreational, i.e. personal use, fishery and its associated industries,
22 and accord priority to those fisheries that have the greatest value to
23 the citizens of the state of Washington. Chinook and coho salmon have
24 generally been proven more valuable in recreational fisheries and
25 should be utilized in this manner except where economic studies show
26 that commercial catch is more valuable. Pink, chum, and sockeye salmon
27 have been shown to be more suitable and valuable in commercial
28 fisheries except for Lake Washington and Lake Wenatchee sockeye salmon,
29 which are more valuable when utilized in a recreational fishery. The
30 department may modify these comparative values only when based on
31 economic studies employing generally accepted statistical and economic
32 procedures and methodology.

33 NEW SECTION. **Sec. 11.** PERFORMANCE AUDIT. The state auditor is
34 directed to annually complete for the governor and publish for the

1 citizens a performance audit relating to compliance with the mandates
2 of this chapter on the part of the department.

3 NEW SECTION. **Sec. 12.** CONSULTATION WITH OREGON. After the
4 effective date of this act, the governor and the director shall consult
5 with the state of Oregon and urge adoption and implementation of the
6 principles and policies set forth in this chapter by the state of
7 Oregon in order to maintain and enhance Columbia river fish stock.

8 NEW SECTION. **Sec. 13.** LEGISLATIVE FUNDING. The legislature shall
9 appropriate the necessary funds to carry out the provisions of this
10 chapter.

11 **Sec. 14.** RCW 75.12.010 and 1983 1st ex.s. c 46 s 46 are each
12 amended to read as follows:

13 (1) Except as provided in this section, it is unlawful to fish
14 commercially for salmon within the waters described in subsection (2)
15 of this section.

16 (2) All waters east and south of a line commencing at a concrete
17 monument on Angeles Point in Clallam county near the mouth of the Elwha
18 River on which is inscribed "Angeles Point Monument" (latitude 48½ 9'
19 3"north, longitude 123½ 33' 01" west of Greenwich Meridian); thence
20 running east on a line 81½ 30' true across the flashlight and bell buoy
21 off Partridge Point and thence continued to longitude 122½ 40' west;
22 thence north to the southerly shore of Sinclair Island; thence along
23 the southerly shore of the island to the most easterly point of the
24 island; thence 46½ true to Carter Point, the most southerly point of
25 Lummi Island; thence northwesterly along the westerly shore line of
26 Lummi Island to where the shore line intersects line of longitude 122½
27 40' west; thence north to the mainland, including: The southerly
28 portion of Hale Passage, Bellingham Bay, Padilla Bay, Fidalgo Bay,
29 Guemes Channel, Skagit Bay, Similk Bay, Saratoga Passage, Holmes
30 Harbor, Possession Sound, Admiralty Inlet, Hood Canal, Puget Sound, and
31 their inlets, passages, waters, waterways, and tributaries.

32 (3) The director may authorize commercial fishing for sockeye
33 salmon within the waters described in subsection (2) of this section
34 during the period June 10 to July 25 and for other salmon from the
35 second Monday of September through November 30, except during the hours
36 between 4:00 p.m. of Friday and 4:00 p.m. of the following Sunday.

1 (4) The director may authorize commercial fishing for salmon ((with
2 ~~gill net gear~~)) prior to the second Monday in September within the
3 waters of Hale Passage, Bellingham Bay, Samish Bay, Padilla Bay,
4 Fidalgo Bay, Guemes Channel, Skagit Bay, and Similk Bay, to wit: Those
5 waters northerly and easterly of a line commencing at Stanwood, thence
6 along the south shore of Skagit Bay to Rocky Point on Camano Island;
7 thence northerly to Polnell Point on Whidbey Island.

8 (5) Whenever the director determines that a stock or run of salmon
9 cannot be harvested in the usual manner, and that the stock or run of
10 salmon may be in danger of being wasted and surplus to natural or
11 artificial spawning requirements, the director may authorize units of
12 ((~~gill net and purse seine~~)) gear conforming to by-catch standards in
13 any number or equivalents, by time and area, to fully utilize the
14 harvestable portions of these salmon runs for the economic well being
15 of the citizens of this state. Gill net and purse seine gear other
16 than emergency and test gear authorized by the director shall not be
17 used in Lake Washington.

18 (6) The director may authorize commercial fishing for pink salmon
19 in each odd-numbered year from August 1 through September 1 in the
20 waters lying inside of a line commencing at the most easterly point of
21 Dungeness Spit and thence projected to Point Partridge on Whidbey
22 Island and a line commencing at Olele Point and thence projected
23 easterly to Bush Point on Whidbey Island.

24 NEW SECTION. Sec. 15. EFFECTIVE DATE. This act shall take effect
25 January 1, 1996.

26 NEW SECTION. Sec. 16. SEVERABILITY. If any provision of this act
27 or its application to any person or circumstance is held invalid, the
28 remainder of the act or the application of the provision to other
29 persons or circumstances is not affected.

30 NEW SECTION. Sec. 17. CAPTIONS. Captions used in this chapter do
31 not constitute any part of the law.

32 NEW SECTION. Sec. 18. CODIFICATION. Sections 1 through 13 and 15
33 through 17 of this act shall constitute a new chapter in Title 75 RCW.

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